# STATE OF MICHIGAN

# COURT OF APPEALS

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| PEOPLE OF THE STATE OF MICHIGAN,<br><br>Plaintiff-Appellee, | UNPUBLISHED<br>April 20, 2001 |
| v<br><br>ROBERT D. WASHINGTON,<br><br>Defendant-Appellant. | No. 215249<br>Oakland Circuit Court<br>LC No. 97-151538-FC |

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| PEOPLE OF THE STATE OF MICHIGAN,<br><br>Plaintiff-Appellee, | |
| v<br><br>QUENTIN J. WADE,<br><br>Defendant-Appellant. | No. 215250<br>Oakland Circuit Court<br>LC No. 97-151537-FC |

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| PEOPLE OF THE STATE OF MICHIGAN,<br><br>Plaintiff-Appellee, | |
| v<br><br>THEATRES JOHNSON,<br><br>Defendant-Appellant. | No. 215277<br>Oakland Circuit Court<br>LC No. 97-151550-FC |

Before: Sawyer, P.J., and Murphy and Saad, JJ.

PER CURIAM.

In this consolidated action these three codefendants each appeal as of right from their convictions of various offenses following a joint trial before three separate juries. We affirm in

all respects except that we remand defendant Johnson's case for vacation of his armed robbery conviction and sentence.

Procedural and Factual Background

Defendants Washington and Wade were each charged with first-degree felony murder, MCL 750.316(1)(b); MSA 28.548(1)(b), armed robbery, MCL 750.529; MSA 28.797, and conspiracy to commit armed robbery, MCL 750.529; MSA 28.797; MCL 750.157a; MSA 28.354(1). Washington was convicted only on the armed robbery and conspiracy counts, and was sentenced to ten to thirty years' imprisonment on each charge. Meanwhile, with respect to the first count, Wade was convicted of the lesser offense of second-degree murder, MCL 750.317; MSA 28.549, and was sentenced to fifteen to forty years' incarceration. He was otherwise convicted as charged and sentenced to twelve to thirty years on each remaining count.

Defendant Johnson was convicted as charged of first-degree felony murder, MCL 750.316(1)(b); MSA 28.548(1)(b), armed robbery, MCL 750.529; MSA 28.797, conspiracy to commit armed robbery, MCL 750.529; MSA 28.797; MCL 750.157a; MSA 28.354(1), and two counts of felony-firearm, MCL 750.227b; MSA 28.424(2). He was sentenced to life imprisonment on the felony murder conviction, twenty to forty years each on the conspiracy and armed robbery convictions, and a consecutive two years each for the felony-firearm convictions.

This action arose out of events occurring during the night of February 28, 1995, when the victim, Rosendo Guerrero, was shot and killed in front of his family during a robbery at his home. The prosecution's theory of the case was that in the weeks leading up to the incident the three codefendants had discussed the possibility of robbing the victim with various other individuals, including Bobby Coyle and Milo Rosario. Coyle and Rosario knew the victim, who dealt them marijuana, and Coyle owed the victim somewhere in the neighborhood of $30,000. These general discussions, which occurred on at least two occasions, concerned the possibility of robbing the victim of money and marijuana he kept in his house. At some point it was decided that codefendants Washington, Wade and Johnson would commit the robbery, with any proceeds to be split five ways. The codefendants subsequently carried out the plan on the night in question when, on the spur of the moment, they decided that the robbery was the best way to cover gambling losses from earlier that evening.

The victim's wife, Tina Guerrero, testified to the following events on the night in question. She was sleeping in the bedroom of the family's home with the couple's baby while the victim was sleeping on the living room couch, in front of the television, with their seven-year-old son. She was awakened by a loud noise, and heard someone speaking with the victim, telling him to let go of their son. The home illuminated by the light from the television and a kitchen light, she went to see what was happening and observed defendant Johnson pointing a gun at the victim and demanding money and "weed." She noticed two other voices in the living room and heard things being moved around like people were looking for something. She then observed a second individual join Johnson, and saw her husband give the two men a shoe box from the kitchen.[1] Next, she and the two children were joined in the bedroom by the victim. The

[1] At defendants' preliminary examination the victim's brother testified that earlier in the day he (continued…)

second individual said to Johnson, "Let's go, let's get out of here. He doesn't have anything." Johnson, however, shot her husband three or four times before leaving.

Though bleeding profusely from gunshot wounds to the stomach and legs, the victim survived until the police arrived. According to the first officer to respond, the victim stated that three black males had kicked in the door and put a gun on him, screaming "Give it up, we know you got it." He was not, however, able to identify his three assailants. Nevertheless, the remaining testimony critically incriminated the three codefendants It was provided by various individuals, including Coyle, who all faced either separate charges or charges related to this incident. These individuals received different degrees of consideration for their testimony, which followed the prosecution's theory of the case and primarily consisted of post-incident admissions on the part of the codefendants.

Each codefendant had a motion for directed verdict denied, yet none testified or even put on a defense. Following their separate convictions each codefendant appealed and by order of this Court the appeals were consolidated. We will discuss each defendant's claims seriatim.

Docket No. 215249

Robert D. Washington

Defendant Washington first claims that the trial court erred in denying his motion to quash the charges of first-degree felony murder and conspiracy to commit armed robbery. He contends that improper hearsay was admitted during the preliminary examination and that because the prosecution's witnesses were inherently incredible, insufficient evidence supported the examining magistrate's decision to bind him over for trial. However, even presuming that insufficient admissible evidence was presented before the magistrate, we find no merit to Washington's claim. No prejudice occurred in this case because at trial Washington was acquitted of the felony murder charge and convicted of the conspiracy to commit armed robbery charge on sufficient admissible evidence. See *People v Hall*, 435 Mich 599, 602-603; 460 NW2d 520 (1990); *People v Meadows*, 175 Mich App 355, 359; 437 NW2d 405 (1989).

Washington next argues that the court erred when it summarily denied his motion for a directed verdict on all three charges. In connection, he argues that because the prosecution relied on informant testimony that was neither reliable nor credible, insufficient evidence supported his convictions of armed robbery and conspiracy to commit armed robbery. We again disagree.

Among the evidence presented by the prosecution, Desiderio Rodriguez testified both that he saw Washington wearing expensive new jewelry the day after the incident and that Washington had admitted to participating in the robbery as the getaway driver. Rodriguez also testified that Washington had told him the victim should not have been shot. Ralph McMorris, who served time with Washington in the Oakland County Jail, testified that Washington had

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had helped the victim count $42,000 in proceeds from drug sales. They had put the money in a shoe box in the kitchen.

admitted his participation in the robbery and had even acknowledged providing codefendant Wade with a gun. McMorris further testified that Washington had spoken of his understanding that the situation was dangerous, but had claimed that no one was supposed to be killed.

Questions regarding the credibility of witnesses are to be left to the trier of fact. See *People v Mehall*, 454 Mich 1, 6; 557 NW2d 110 (1997); *People v Peña*, 224 Mich App 650, 659; 569 NW2d 871 (1997) modified in part on other grds 457 Mich 885; 586 NW2d 925 (1998). Thus, although the credibility of these and other witnesses was suspect, viewed in the light most favorable to the prosecution a rational trier of fact could find that the essential elements of the charged crimes were proven beyond a reasonable doubt by this evidence of Washington's admissions to participation in the common endeavor. See *People v Vincent*, 455 Mich 110, 121; 565 NW2d 629 (1997). Given that the evidence was sufficient to deny the motion for a directed verdict and send all charges to the jury, in light of Washington's subsequent decision to present no defense we further conclude that the evidence was sufficient to sustain his ultimate convictions of conspiracy and armed robbery. See *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999); *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748, amended 441 Mich 1201 (1992).

Lastly, we conclude that the trial court did not abuse its discretion in sentencing Washington. *People v Milbourn*, 435 Mich 630, 635-636, 654; 461 NW2d 1 (1990); *People v Bennett*, 241 Mich App 511, 515; 616 NW2d 703 (2000). Washington's sentences are within the applicable judicial sentencing guidelines range and thus are presumptively proportionate. *People v Broden*, 428 Mich 343, 354-355; 408 NW2d 789 (1987); *People v Kennebrew*, 220 Mich App 601, 609; 560 NW2d 354 (1996). By merely challenging the credibility of the prosecution's witnesses and asserting his minimal culpability, Washington fails to identify unusual circumstances that would justify downward departure. See *People v Daniel*, 207 Mich App 47, 54; 523 NW2d 830 (1994). Accordingly, Washington's convictions and sentences are affirmed.

Docket No. 215250

Quentin J. Wade

Defendant Wade initially argues that the trial court erred in not dismissing with prejudice the charges facing him based on an alleged violation of the 180-day rule. He also contends that the delay in trying this case violated his constitutional right to a speedy trial. We disagree with both claims.

MCL 780.131(1); MSA 28.969(1)(1) establishes the 180-day rule, the purpose of which is to dispose of untried charges against prison inmates so that sentences can run concurrently. *People v Chavies*, 234 Mich App 274, 280; 593 NW2d 655 (1999).[2] Pursuant to MCR

[2] MCL 780.131(1); MSA 28.969(1)(1) provides, in pertinent part:

> Whenever the department of corrections receives notice that there is pending in this state any untried warrant, indictment, information, or complaint setting forth against any inmate of a correctional facility of this state a criminal offense for which a prison sentence might be imposed upon conviction, the inmate shall be

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6.004(D)(2), the remedy for violation of the rule is to dismiss with prejudice the untried charges facing a defendant.

The instant charges were pending against the codefendants from October 6, 1996. On March 19, 1997, while the extended preliminary examination on these charges was ongoing, Wade was sentenced to a prison term on an unrelated unarmed robbery conviction. The codefendants were then arraigned on April 17, 1997, and trial proceedings began on June 18, 1998. Where, as here, trial proceedings did not commence within 180 days, the relevant inquiry asks whether the prosecutor took good-faith action during the 180-day period and proceeded promptly toward readying the case for trial. See *People v Hendershot*, 357 Mich 300, 303-304; 98 NW2d 568 (1959); *People v Bell*, 209 Mich App 273, 278; 530 NW2d 167 (1995). The burden is on the prosecutor to justify any delay. *People v Wolak*, 153 Mich App 60, 64; 395 NW2d 240 (1986). This Court reviews a trial court's attribution of delay for clear error. *People v Crawford*, 232 Mich App 608, 612; 591 NW2d 669 (1998).

In denying Wade's motion seeking dismissal for violation of the 180-day rule, the trial court indicated that most delays were attributable to motions filed by Wade and his codefendants and ruled that otherwise, the delay was justified due to the complexity of the case. Having examined the record to determine the reasons for the delay in this case, we agree with the trial court's ruling.

Portions of the delay must be attributed to Wade as the time was associated with his efforts toward filing his motion for separate trial. See *People v Finley*, 177 Mich App 215, 220; 441 NW2d 774 (1989). Other periods of delay were due to motions filed by the codefendants and likewise should not be attributed to the prosecution. Additionally, delay due to reassignment of the case to different judges occurred during the reorganization of the Oakland Circuit Court, when the Family Division was being established and dockets were set with appropriate judges. The multiple reassignments were not, therefore, due to chronic docket congestion, but rather were the result of an exceptional and unavoidable circumstance which hampered the normal functioning of the trial court. As such, this delay was excusable. *Wolak, supra* at 66-67.

Overall, the complex nature of this case necessitated maneuvering and dealing on the part of the prosecution as it built its case. We are satisfied that during all remaining periods of otherwise unattributed delay, the prosecution was exercising reasonable diligence and was steadily progressing toward trial. See *People v Forrest*, 72 Mich App 266, 270; 249 NW2d 384 (1976). We accordingly conclude that no violation of the 180-day rule occurred. Dismissal was unwarranted.

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> brought to trial within 180 days after the department of corrections causes to be delivered to the prosecuting attorney of the county in which the warrant, indictment, information, or complaint is pending written notice of the place of imprisonment of the inmate and a request for final disposition of the warrant, indictment, information, or complaint.

For much the same reasons, the circumstances of this case do not merit reversal for violation of the speedy trial right. Whether a defendant was denied a speedy trial is a mixed question of fact and law. Factual findings are reviewed for clear error, while the constitutional issue is a question of law subject to de novo review. *People v Gilmore,* 222 Mich App 442, 459; 564 NW2d 158 (1997). In determining whether a defendant has been denied a speedy trial, four factors must be balanced: (1) the length of the delay; (2) the reasons for the delay; (3) whether the defendant asserted his right to a speedy trial; and (4) prejudice to the defendant from the delay. *Barker v Wingo,* 407 US 514, 530; 92 S Ct 2182; 33 L Ed 2d 101 (1972); *People v Hill*, 402 Mich 272, 283; 262 NW2d 641 (1978); *People v Mackle*, 241 Mich App 583, 602; 617 NW2d 339 (2000).

Here, the delay was lengthy, but reasonable given the action's complex nature. See *People v Cooper*, 166 Mich App 638, 655; 421 NW2d 177 (1987). Moreover, though Wade at one point stated that he was not waiving his speedy trial right, he never affirmatively asserted the right. See *People v Cain*, 238 Mich App 95, 111; 605 NW2d 28 (1999). Given that Wade wholly fails to allege how he was prejudiced by the delay, we conclude that no remedial action is necessary.

Wade next raises two evidentiary issues, arguing first that a portion of Rodriguez's testimony was improperly admitted as a non-hearsay statement of a coconspirator pursuant to MRE 801(d)(2)(E),[3] and second that admission of photographs taken during the victim's autopsy was error. We find no abuse of discretion.

The decision whether to admit evidence is within the discretion of the trial court and will not be disturbed on appeal absent a clear abuse of discretion. *People v Starr,* 457 Mich 490, 494; 577 NW2d 673 (1998); *People v Mills*, 450 Mich 61, 76; 537 NW2d 909 (1995); *People v Ho,* 231 Mich App 178, 187-188; 585 NW2d 357 (1998). Furthermore, photographs are not excludable simply because a witness can orally testify about the information contained in the photographs. *Mills, supra.* And although admission of gruesome photographs solely to arouse the sympathies or prejudices of the jury may be error requiring reversal, *Ho, supra* at 188, gruesomeness alone need not cause exclusion. *Mills, supra.* The proper inquiry is always whether the probative value of the photographs is substantially outweighed by unfair prejudice. *Id.*

With respect to the alleged improper hearsay evidence, it was reasonable to infer from Wade's presence during conversations when the possibility of robbing the victim was discussed and from the evidence demonstrating his subsequent participation in the robbery that he was in fact a conspirator. See *People v Cotton,* 191 Mich App 377, 393; 478 NW2d 681 (1991). Accordingly, Rodriguez's contested testimony was admissible under MRE 801(d)(2)(E). With respect to the autopsy photographs, used to corroborate the medical examiner's testimony regarding the nature of the victim's wounds, see *Mills, supra*, the visual depiction of the number and location of the wounds was probative of the issue of intent to kill, a necessary element of the

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[3] MRE 801(d)(2)(E) defines as a non-hearsay statement "a statement by a coconspirator of a party during the course and in furtherance of the conspiracy on independent proof of the conspiracy."

murder charge. Wade fails to convince that the court abused its discretion in determining that any prejudicial effect attributable to the photographs did not outweigh their probative nature, especially where only five black and white photos—selected from a group of twenty that included color shots—were submitted for admission.

Even if erroneously admitted, whether inappropriate evidence requires reversal depends on the nature of the error and its effect in light of the weight of the properly admitted evidence. See *People v Smith*, 456 Mich 543, 555; 581 NW2d 654 (1998). An evidentiary error does not merit reversal in a criminal case unless, after an examination of the entire cause, it affirmatively appears that it is more probable than not that the error was outcome determinative. *People v Smith*, 243 Mich App 657, 680; ___ NW2d ___ (2000). Given the strength of the uncontested evidence against Wade, we have no doubt that he would have been convicted on the charges even absent this challenged evidence.

Next, Wade argues that insufficient evidence supported his murder conviction. He contends that even if believing the evidence suggesting that he participated in the robbery, no jury could find that he possessed the malice requisite for second-degree murder. We disagree.

Considering the evidence presented in the light most favorable to the prosecution, we conclude that a rational trier of fact could find that the necessary element of malice was proven beyond a reasonable doubt. *Johnson, supra* at 723; *Wolfe, supra* at 515. Wade knew going into the robbery that the victim was a significant drug dealer who was likely to be armed. It was reasonable for the jury to infer that by instigating the robbery on the night in question Wade intentionally set in motion a course of action likely to result in death or great bodily harm. See *People v Jolly*, 442 Mich 458, 466; 502 NW2d 177 (1993); *People v Turner*, 213 Mich App 558, 566-567; 540 NW2d 728 (1995).

Wade additionally fails to show that the trial court abused its discretion in denying his motions to sever the trials of the codefendants. See MCL 768.5; MSA 28.1028; MCR 6.121(D); *People v Hana*, 447 Mich 325, 346; 524 NW2d 682 (1994). At no point during the pretrial proceedings did Wade provide the court with a supporting affidavit or offer of proof that clearly, affirmatively, and fully demonstrated how his substantial rights would be prejudiced. *Id.* Recognizing the possibility for a measure of conflict, however, over the prosecution's objection the trial court granted partial severance and ordered separate juries. As further protection the court also sequestered Wade's jury during portions of certain witnesses' testimony.[4] Despite implementation of these safeguards, Wade nevertheless asserts that he was prejudiced when his jury was present during his codefendants' cross-examination of Guerrero. Contrary to his claims, however, we conclude that although his codefendants' defenses were inconsistent with his theory of the case, the defenses were neither mutually exclusive nor irreconcilable. *Id.* at 349. Wade fails to show that his jury was required to convict him because of its belief in either of his codefendants' defenses. *Id.* at 360.

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[4] In each instance evidence known to be inadmissible against Wade was anticipated to be elicited by one of his codefendants.

Lastly, we find no merit in Wade's claims of instructional error. A judge must instruct on lesser included offenses when so requested and if supported by the evidence. *People v Moore*, 189 Mich App 315, 319; 472 NW2d 1 (1991). Because the common-law offense of accessory after the fact is not in the same class or category as murder, it is not a cognate offense of murder. *People v Perry*, 460 Mich 55, 62-63; 594 NW2d 477 (1999). The trial court, therefore, properly refused to instruct on accessory after the fact. Additionally, though the offense of involuntary manslaughter was not supported by the evidence,[5] because the court's provision of this instruction gave the jury the option of convicting defendant of an even lower offense than second-degree murder, the error in submitting the instruction was harmless. *People v Graves*, 458 Mich 476, 487; 581 NW2d 229 (1998); see also *People v Beach*, 429 Mich 450; 418 NW2d 861 (1988). Wade's convictions are accordingly affirmed.

Docket No. 215277

Theatres Johnson

Defendant Johnson first contends that the trial court erred with respect to admission of Tina Guerrero's identification testimony. Contrary to his arguments, we find that the court applied the appropriate test and correctly reached the conclusion that in light of all the circumstances surrounding the identification, it was not unduly suggestive.

A trial court's decision to admit identification evidence will not be reversed unless it is clearly erroneous. Clear error exists when the reviewing court is left with a definite and firm conviction that a mistake was made. *People v Kurylczyk*, 443 Mich 289, 303 (Griffin, J.), 318 (Boyle, J.); 505 NW2d 528 (1993). The fairness of an identification procedure is evaluated in light of the total circumstances. *Id.* at 302 (Griffin, J.), 318 (Boyle, J.); *People v Lee*, 391 Mich 618, 626; 218 NW2d 655 (1974). The test is whether the procedure was so impermissibly suggestive as to have led to a substantial likelihood of misidentification. *Kurylczyk, supra* at 306 (Griffin, J.), 318 (Boyle, J.). Factors to consider include the opportunity of the witness to view the criminal at the time of the crime, the witness's degree of attention, the accuracy of the witness's prior description of the criminal, the level of certainty demonstrated by the witness at the confrontation, and the length of time between the crime and the confrontation. *Id.*

Before trial proceedings began, the court conducted an evidentiary hearing on Johnson's motion to suppress the identification. In ruling that Guerrero would be permitted to testify on the issue the court appropriately applied the *Kurylczyk* factors, albeit in a generalized fashion, and found that the out-of-court photographic identification procedures were not unduly suggestive. Among the circumstances noted by the court in support of the validity of Guerrero's identification

[5] Involuntary manslaughter is the unintentional killing of another without malice in (1) the commission of some unlawful act not amounting to a felony and not naturally tending to cause death or great bodily harm, or (2) the commission of some lawful act, negligently performed or (3) in the negligent omission to perform some legal duty. *People v Heflin*, 434 Mich 482, 507-508; 456 NW2d 10 (1990). None of these circumstances applies in this case, and accordingly, there was no basis for the court's instruction.

was the fact that she was close to Johnson when he threatened and shot her husband and was easily able to see him because of the illumination from the kitchen light and the television. Additionally, Guerrero's description of the shooter generally matched Johnson in most critical aspects. Furthermore, though police officers testified that when picking him out during the challenged photo identifications Guerrero was less than definite in her identification of Johnson, she stated on each occasion that the key detail guiding her choice was the fact that his eyes matched those of the shooter. Guerrero's testimony at the evidentiary hearing corroborated this, as she indicated that she had focused on the shooter's eyes during the incident.

Though the court's discussion of the relevant factors was not isolated or defined, there is no merit to defendant's claim that the trial court applied the wrong test when analyzing the suggestiveness of the photo identifications. We find that the court considered the appropriate issues and conclude that it did not clearly err in reaching its result. *Kurylczyk*, *supra* at 303. Additionally, we find harmless any error that could be attributed to the court's provision of a supplemental jury instruction related to Guerrero's identification testimony.[6] Reversal on the basis of such error is unwarranted because, after reviewing the record, we are satisfied that any arguable error did not result in a miscarriage of justice. *People v Bartlett*, 231 Mich App 139, 143-144; 585 NW2d 341 (1998).

Johnson next argues that the court erred in restricting his cross-examination of one of the prosecution's key witnesses, Eddie Carrasquillo. Johnson sought to elicit from Carrasquillo testimony that seven years earlier he had committed a shooting, but had allowed his uncle to take responsibility in order to avoid jail time. His theory of the case was that someone else, possibly Carrasquillo, had committed the robbery and killed the victim. Johnson wanted to establish that Carrasquillo had implicated him in an effort to deflect responsibility, and he contended that the anticipated evidence would demonstrate Carrasquillo's motive and intent to lie in order to protect himself.

Pursuant to MRE 404(b), evidence of other acts must satisfy three requirements: (1) it must be offered for a proper, i.e., noncharacter, purpose, (2) it must be relevant, and (3) its probative value must not be substantially outweighed by its potential for unfair prejudice. *Starr*, *supra* at 496; *People v VanderVliet*, 444 Mich 52, 74; 508 NW2d 114 (1993), modified 445 Mich 1205 (1994). The rule applies to the admissibility of evidence of other acts of any person, including a witness, and no matter whose prior acts are at issue, the party seeking to introduce the evidence remains bound by the requirement that the evidence is not offered to prove conformity

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[6] The challenged supplemental instruction concerned photographic exhibits identified as the mug shots Guerrero had hesitatingly picked out on the night her husband was shot and killed. The instruction clarified which four mug shots, out of five photographs given to the jury, had been selected by Guerrero. Providing the instruction in response to the jury's request for clarification, the court reiterated a stipulation entered by the parties. Defendant Johnson objected to the court's refusal to additionally instruct the jury with respect to Guerrero's somewhat contradictory testimony, provided before the stipulation was entered. Because Guerrero's testimony regarding this issue was equivocal, and because other testimony demonstrates that she was noncommittal at the time of her selection of the mug shots, we believe that any concern on the part of the jury with respect to this issue was inconsequential.

with character. *People v Catanzarite*, 211 Mich App 573, 579; 536 NW2d 570 (1995). Here, nothing about the anticipated testimony would prove motive or intent to lie in the instant case. To the contrary, the only thing the evidence would suggest is Carrasquillo's propensity for accusing others to protect himself. Because use of other acts evidence for the purpose of suggesting a propensity for similar conduct is prohibited, we conclude that the trial court did not abuse its discretion in preventing defense counsel from exploring this area during Carrasquillo's cross-examination. *People v Crawford*, 458 Mich 376, 383; 582 NW2d 785 (1998).

Lastly, we agree with Johnson that his conviction and sentencing for both felony murder and the predicate offense violated his right against double jeopardy. *People v Bigelow*, 229 Mich App 218, 221-222; 581 NW2d 744 (1998). We accordingly remand this matter to the trial court for vacation of Johnson's armed robbery conviction and sentence. See *People v Gimotty*, 216 Mich App 254, 259-260; 549 NW2d 39 (1996).

Defendants' convictions and sentences are affirmed except that we remand defendant Johnson's case for vacation of his armed robbery conviction and sentence. We retain no jurisdiction.

/s/ David H. Sawyer
/s/ William B. Murphy
/s/ Henry William Saad